

Appl. No. : 09/695,609  
Filed : October 23, 2000

## REMARKS

The September 14, 2004 Office Action was based upon pending Claims 1-89. In the Office Action, the Examiner stated that the priority date to the provisional application needs to be perfected. Applicant notes that while the Examiner rejected Claims 1-72 under 35 U.S.C. §102(b) based upon a public use or sale of the invention, there are now 89 Claims pending in the application.

### Perfection of Priority

By way of background, the Examiner sent two Office Actions on August 4, 2004. As explained below, the first August 4<sup>th</sup> Office Action raised the objections that were later reiterated in the September 14<sup>th</sup> Office Action. The second August 4<sup>th</sup> Office Action stated that documents submitted in the provisional application had been lost during the PTO automation process.

In a subsequent telephone conversation, the Examiner stated that two August 4<sup>th</sup> Office Actions were not properly entered into the docketing system and explained that he would issue another Office Action. The Examiner then sent a new Office Action on September 14, 2004. This September 14, 2004 Office Action repeated the rejections raised in the August 4, 2004 Office Action. The September 14, 2004 Office Action set the response dates and thus, the calculation of fees associated with any extensions of time have been calculated from the September 14<sup>th</sup> Office Action. If this is incorrect, please let us know.

In the September 14<sup>th</sup> Office Action, the Examiner requested that an affidavit be submitted by the inventor to perfect priority. Applicant believes that the text and drawings within the provisional application provides adequate support and fully enables the invention. In an effort to address any Examiner concerns, however, Applicant has also submitted the attached declaration by the inventor, Guy Harrison.

The declaration states that the text and code of the provisional patent application enables the invention in that it provides sufficient detail to make and use the claimed subject matter. The declaration also identifies the enabling code and text provided in the provisional application.

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In addition, Applicant has attached copies of the five documents that were lost during the PTO automation process. The missing documents include: Instance Monitor Internet Printout, Instance Monitor Installation Guide, Instance Monitor's Installation Guide, Tuning Guide, and the User's Manual. It is our understanding that the Examiner at one time reviewed the missing documents, but that they are no longer in the file.

Accordingly, the Applicants submit that the declaration addresses the Examiner's concerns that the code of the provisional application and associated text enable the invention. Applicants therefore respectfully submit that the claim to priority has been perfected.

**Rejection of Claims 1-72 under 35 U.S.C. § 102(b)**

The Examiner rejected Claims 1-72 under 35 U.S.C. § 102(b) based upon a public use or sale of the invention. In the response dated June 29, 2004, Applicants added Claims 73-89. Applicant respectfully submits that priority has been established and that the rejection based upon public use or sale has been overcome and that Claims 1-89 should be allowed.

**Conclusion**

Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. In light of the above remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: John R. King  
John R. King  
Registration No. 34,362  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404